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REMARKS

Claims 1-20, 23 and 26 were rejected under 35 USC 102(a) as being anticipated by Okkels. As to pending claims 1, 3-8 and 10-14, the rejection is herein traversed based upon the amendments and remarks presented herein.

Okkels does not anticipate independent claims 1 and 8 and, accordingly, the Office Action does not state a *prima facie* case of obviousness with respect to pending claims 1, 3-8 and 10-14. A claim is anticipated only if each and every claimed element is either expressly or inherently described in a single prior art reference (see, for example, Verdegaal Bros v. Union Oil Co. of California, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). The independent claims provide a "fixing" step. Okkels, on the other hand, does not specifically disclose a "fixing" step. Likewise, the claims require a "smaller swatch." Okkels does not disclose a "smaller swatch." Accordingly, the Office Action does not state a *prima facie* case of anticipation, and reconsideration and withdrawal of the rejections are respectfully requested.¹

Claims 21-22 and 24-24 were rejected under 35 USC 103(a). Likewise, claims 15-26 were rejected under 35 USC 112, first paragraph. Claims 15-26 have been canceled. Accordingly, these rejections are deemed moot, and withdrawal of the rejections are herein respectfully requested.

Claim 1 was rejected under 35 USC 112, second paragraph because, according to the Office Action, the claim is directed to an assay without reciting a step that would make the claim recite an assay (e.g., a final step wherein the method determines wash performance). The rejection is traversed based upon the amendments presented herein which now recite a step for determining wash performance (which can be determined by, for example, measurement of absorbance, etc.; (see, for example, page 4, lines 31 et seq) of the disclosure. Based upon the amendment, reconsideration and withdrawal of the rejection are herein requested.

¹ It appears that the Office Action does not provide a *bona fide prima facie* case of anticipation, especially in view of the fact that the remarks made herein are similar or identical to the remarks presented in Applicants' previous Response (see Amendment filed October 4, 2002), and the remarks presented in the previous Office Action appear not to have been considered in preparing the current Office Action. Applicants respectfully remind the Examiner that the burden is on the Patent Office, and specifically the Examiner, to communicate a *prima facie* case of anticipation (see, for example, MPEP 2131 et seq), and a bald assertion that "...each of the features of the claims are taught by Okkels for the same function as claimed..." (see current Office Action, page 2, line 22-23) is legally insufficient to satisfy that burden.

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Claim 2 has been rejected under 35 USC 112, second paragraph. Claim 2 has been canceled, and the subject matter of claim 2 has been incorporated into independent claim 1; similar subject matter can be found in independent claim 8. The rejection in the Office Action presumes that the term "smaller" is an adjective which describes swatch; thus, according to the Office Action, since there is no comparative term, or sample, the term is indefinite. However, the term is not used in that sense; rather, the term is used as part of the noun phrase "smaller swatch" which is defined by the specification and has a definite meaning (see, e.g., page 3, lines 16 et seq.). Accordingly, the term "smaller swatch" is definite, and reconsideration and withdrawal of the rejection are herein requested.

Likewise, claim 6 has been rejected under 35 USC 112, second paragraph, based upon a presumed reading which is not part of the claim. According to the Office Action, "detergent ingredient" is unclear "...as to what it is an ingredient of..." The phrase, however, denotes a detergent ingredient, or, rather, an additional item in combination with the enzyme (see claim 6). Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

Claims 7 and 8 were rejected under 35 USC 112, second paragraph for failing to particularly point out and distinctly claim the subject matter to which Applicants are entitled. The rejections are moot based upon the amendments presented herein; accordingly, reconsideration and withdrawal of the rejections are herein respectfully requested.

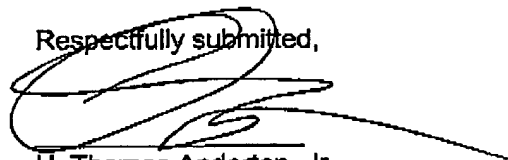
As requested by the Office Action, the Title of the invention has been changed. Likewise, as required by the Office Action, the Abstract of the Disclosure has been submitted as a separate sheet. Reconsideration and withdrawal of these objections are herein requested based upon these submissions.

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CONCLUSION

In light of the above amendments, as well as the remarks, the Applicants believe the pending claims are in condition for allowance and issuance of a formal Notice of Allowance at an early date is respectfully requested. If a telephone conference would expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (650) 846-7544.

Respectfully submitted,



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